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9 Attorneys for Defendants World Savings Bank
FSB (renamed "Wachovia Mortgage, FSB") and
Golden West Savings Association Service
10 Company

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO/OAKLAND DIVISION
14

15 KEVIN R. MCLEAN,

16 Plaintiff,

17 vs.

18 WORLD SAVINGS FSB; INTEGRITY
INVESTMENT GROUP LLC; GOLDEN WEST
SAVINGS ASSOCIATION SERVICE CO;
19 SUSAN FEDERICHI; BILL FORD; JEFFERY
FORD; CALIFORNIA FRANCHISE TAX
20 BOARD; WILLIAM L. VEEN.

21 Defendants.
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Case No.: 3:07-cv-5594 JSW

**DEFENDANTS WORLD SAVINGS BANK
FSB AND GOLDEN WEST SAVINGS
ASSOCIATION SERVICE COMPANY'S
REPLY IN SUPPORT OF THEIR MOTION
TO DISMISS PURSUANT TO FRCP
12(B)(1)**

Date: March 28, 2008
Time: 9:00 a.m.
Crm: 2, 17th Floor

The Honorable Jeffrey S. White

No.: 3:07-cv-5594 JSW

DEFENDANT WORLD SAVINGS FSB AND GOLDEN WEST SAVINGS ASSOCIATION SERVICE COMPANY'S
REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PURSUANT TO FRCP 12(b)(1)

1 **I. ARGUMENT**

2 Plaintiff Kevin McLean (“Plaintiff”) does not and cannot dispute that his claims against
 3 Defendants World Savings FSB (“World Savings”) and Golden West Savings Association (“Golden
 4 West”) (hereinafter collectively “Defendants”) fail because they do not present a federal question.
 5 Instead, Plaintiff argues the merits of his case by referring the Court to *In re Acosta*, 181 B.R. 477
 6 (Bkrcty.D.Ariz., 1995). (See Plaintiff’s Opposition (“Opp.”) at p. 2). Plaintiff’s argument flatly fails
 7 because *In re Acosta* is irrelevant to the jurisdictional question presented to this Court.

8 As Plaintiff relates in his opposition, the court in *In re Acosta* held that a foreclosing creditor
 9 was required to give actual notice of a postponed sale date, even though Arizona statute did not
 10 expressly require it. *In re Acosta*, 181 B.R. at 479. The court in *In re Acosta* was not presented with
 11 the issue of whether the underlying action was appropriately before the court. In fact, the federal
 12 jurisdiction of the court was likely presumed under the supplemental jurisdiction doctrine because
 13 the debtor raised the propriety of the foreclosing creditor’s action by motion *within* a bankruptcy
 14 proceeding. See 28 USC § 1367(a) (in any civil action of which the district courts have original
 15 jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so
 16 related to claims in the action within such original jurisdiction that they form part of the same case or
 17 controversy under Article III of the United States Constitution.)

18 In the current instance, by contrast, Plaintiff seeks to set aside a foreclosure sale by a separate
 19 action. As provided more fully in Defendants’ Memorandum of Points and Authorities, Plaintiffs’
 20 claims fail because they do not present a federal question. Moreover, Plaintiff cannot amend his
 21 complaint to cure this deficiency, and as such, Plaintiff should not be given an opportunity to amend
 22 his complaint.

23
 24 **II. CONCLUSION**

25 For the foregoing reasons and for the reasons set forth in Defendants’ Memorandum of
 26 Points and Authorities in Support of their Motion to Dismiss, Defendants respectfully requests that
 27 this Court dismiss Plaintiff’s complaint.

1 DATED: February 28, 2008.

2 REED SMITH LLP

3
4 By /s/ R. Euna Kim
5 Jack R. Nelson
6 R. Euna Kim
7 Attorneys for Defendants
8 World Savings Bank, FSB (renamed as “Wachovia
9 Mortgage, FSB”) and Golden West Savings
10 Association Service Company
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